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COMMITTEE AGAINST TORTURE

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SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 383rd MEETING

Held at the Palais des Nations, Geneva,
on Friday, 7 May 1999, at 3 p.m.

Chairman: Mr. BURNS

CONTENTS

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (continued)

Second periodic report of Luxembourg (continued)

Second periodic report of Morocco (continued)

* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.383/Add.1.

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The meeting was called to order at 3. p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 5) (continued)

Second periodic report of Luxembourg (continued) (CAT/C/17/Add.20)

Conclusions and recommendations of the Committee (CAT/C/XXII/Misc.9/Add.5)

1. At the invitation of the Chairman, Mrs. Pranchère-Tomassini, Mrs. Clemang and Mr. Nicolay (Luxembourg) took places at the Committee table.

2. Mr. SILVA ENRIQUES GASPAR (Country Rapporteur) read out the conclusions and recommendations adopted by the Committee concerning the second periodic report of Luxembourg (CAT/C/XXII/Misc.9/Add.5):

"1. The Committee considered the second periodic report of Luxembourg (CAT/C/17/Add.20) at its 376th, 379th and 383rd meetings, held on 4, 5 and 7 May 1999 (see CAT/C/SR.376, 379 and 383) and adopted the following conclusions and recommendations.

A. Introduction

2. The Committee welcomes the second periodic report of Luxembourg and the oral report by the representatives of the State party. It noted, however, that the report was submitted six years late.

B. Positive aspects

3. The Committee takes note of the following positive aspects:

(a) The formal abolition of the death penalty;

(b) Legislation concerning the entry and residence of foreigners, which prohibits the expulsion or return of a foreigner if he is in danger of being subjected to acts of torture or cruel, inhuman or degrading treatment in another country;

(c) The proposed amendments of criminal legislation relating to: (i) the characterization of torture as a specific offence; (ii) amendment of the law on extradition in order to bring it into line with article 3 of the Convention; (iii) establishment of universal competence concerning acts of torture; and (iv) improvement of guarantees for persons held in custody.

C. Factors and difficulties impeding implementation of the Convention

4. The Committee has noted no factor or difficulty impeding the effective implementation of the Convention for the State of Luxembourg.

D. Subjects of concern

5. The Committee is concerned about the following:

(a) The length and frequent use of strict solitary confinement imposed on detainees and the fact that this disciplinary measure may not be the subject of appeal;

(b) The situation of young offenders held in Luxembourg prison;

(c) The disciplinary regime imposed on minors held in socio-educational centres;

(d) The fact that the report did not cover all articles of the Convention, particularly articles 11, 14, 15 and 16.

E. Recommendations

6. The Committee recommends that the State party should:

(a) Adopt the legislation defining torture in accordance with article 1 of the Convention, and consider all acts of torture as a specific offence;

(b) Introduce into law the possibility of an effective appeal against the most severe disciplinary measures imposed on detainees and reduce the severity of these measures;

(c) Put an end as soon as possible to the practice of placing young offenders, including minors, in the prison for adults;

(d) Ensure that the obligations arising from articles 11, 12, 14 and 15 of the Convention are duly respected; and

(e) Submit its third and fourth periodic reports, due on 28 October 1996 and 28 October 2000 respectively, by 28 October 2000 at the latest."

3. Mrs. PRANCHÈRE-TOMASSINI (Luxembourg) assured the Committee that the competent authorities would be informed as soon as possible of its conclusions and recommendations.

4. The delegation of Luxembourg withdrew.

Second periodic report of Morocco (continued) (CAT/C/43/Add.2)

5. At the invitation of the Chairman, Mr. Benjelloun-Touimi, Mr. Belmahi, Mr. Habib Belkouch and Mr. Majdi (Morocco) took places at the Committee table.

6. The CHAIRMAN invited the delegation of Morocco to respond to the questions raised at the Committee's 380th meeting.

7. Mr. BENJELLOUN-TOUIMI (Morocco) said that Morocco was reluctant to respond to questions concerning the Western Sahara because of the sensitive

negotiations taking place in the United Nations on a settlement plan and the holding of a referendum by July 2000. The issues raised by the Committee would certainly be covered in the settlement plan.

8. The Moroccan Penal Code and Code of Criminal Procedure were under review. All matters relating to police custody and incommunicado detention would be brought into line with the provisions of the Convention. In addition, a new Prison Code would shortly be discussed in Parliament.

9. Mr. BELMAHI (Morocco) said that the Committee's comments and suggestions provided valuable support for his country's efforts to update its legislation.

10. All decisions by the administrative courts concerning natural or legal persons were open to appeal and could be revoked on grounds of abuse of official authority. Appeals must be lodged within six days of publication of the decision or of notification by the party concerned. The first decision by the administrative courts, adopted in March 1995, had been directed against the Minister of Justice.

11. The military courts heard cases involving offences committed by or against members of the armed forces or in which armed forces personnel were co-perpetrators or accomplices, offences against the regulations governing weapons, and offences committed by civilians against the external security of the State. That last category of offence was covered not by the Code of Military Justice but by articles 180 to 200 of the Penal Code and two Appeal Court judges sat alongside the judges of the military court. The president of the military court was always a civilian and its hearings were held in public. Appeals lay to the Criminal Chamber of the Appeal Court. The role of the military courts was being scaled down, especially for offences against external security. A case in point was the armed attack by individuals of dual Moroccan and Algerian nationality on the Atlas Asni Hotel, an incident which had claimed the lives of two Spanish tourists. Although the perpetrators had been charged, inter alia, with offences against external security, the case had been heard by a civilian court.

12. With regard to investigations of allegations of torture and the right of complaint, the relevant judicial procedures were described in the report. However, the administration also conducted investigations. For example, following a fire at Oukacha prison in Casablanca in 1997, the Minister of Justice had requested the Office of the Public Prosecutor to open an investigation in order to establish the cause of the fire and whether a criminal offence had been committed. The examining magistrate of the Court of Casablanca had dismissed the proceedings and the Minister had appealed against his decision through the Office of the Public Prosecutor, calling for greater transparency. The Appeal Court had endorsed the decision of the examining magistrate and the Minister had appealed to the Supreme Court, which was currently hearing the case.

13. With regard to Amnesty International's allegation of sexual abuse of a 17-year-old boy, Hichem Chekroun, in Oukacha prison in January 1999, Mr. Chekroun had not been transferred to the adult wing of the prison. The attacker was a 19-year-old inmate who had shared his cell. When news of the incident had reached the Moroccan media, the Prison Authority had set up a commission of inquiry, which had referred the case to the Office of the Public

Prosecutor of Casablanca. Four prison officials had been prosecuted as co-perpetrators or accomplices. Two were in custody and two had been released on bail.

14. Three police officers had been sentenced to terms of imprisonment ranging from 3 to 12 years in the case of Hamid Mourabet, who had died in police custody in 1996. Three police officers were also being prosecuted in connection with the death in police custody of Houssein Al-Mernissi in 1997. In the case of Youssef Rami, who had died in hospital following an assault in a police station in 1996, the examining magistrate had decided to terminate the inquiry but the Office of the Public Prosecutor had demanded that the investigation of three police officers should be continued. The Committee would be kept informed of developments. Lastly, Rabat Appeal Court had sentenced a police officer in July 1998 to 10 years' imprisonment for torture and ill-treatment of a detainee.

15. Numerous circulars calling for full respect for the rule of law had been sent by the Ministry of Justice to the Office of the Public Prosecutor, by the Ministry of the Interior to the Director-General of the Police Department and by the Director-General to police commissioners. The Police Department ran training courses to generate awareness of human rights among law enforcement officers and published a journal, La Sûreté nationale, concerning legal, social and cultural issues of relevance to the police force. The Convention had been published in one of its 1987 issues in Arabic and English.

16. Many of the complaints received by the Ministry of Human Rights were from individuals who were unfamiliar with the existing judicial remedies. Prisoners approached the Ministry with requests for amnesty or for transfer to prisons closer to home and with complaints of ill-treatment by prison warders. The Ministry had taken steps to rehabilitate former detainees, especially political prisoners, and reintegrate them into society, for example by regularizing their administrative files and providing them with certificates for free medical treatment. The Ministry responded at once to allegations of human rights violations in the media or emanating from NGOs. Whenever there was a death in custody, it wrote to the Ministry of Justice requesting an autopsy.

17. A reform of the police custody regime had been proposed. Under the existing Code of Criminal Procedure, the police were required to inform the family of an arrested person of his whereabouts and to provide the Principal Crown Prosecutor with a daily list of persons taken into custody during the preceding 24 hours. A medical examination could be ordered by the judge or demanded by the arrested person. Article 10 of the Constitution stipulated that no one could be arrested, detained or punished except in such circumstances and in accordance with such procedures as were prescribed by the law. Under article 27 of the Criminal Code, illegal or arbitrary detention was punishable by disqualification from office.

18. Prison reform was one of the fields in which the most headway had been made. On 4 May, just a few days earlier, the legislation and human rights commission of the Chamber of Representatives had approved a Prisons Bill which included a number of amendments suggested by human rights experts and NGOs.

The Bill was currently being referred to the legislation and human rights commission of the Chamber of Councillors. By July it would be presented before the entire Parliament and, if adodpted, would become law.

19. Of course there were problems in Moroccan prisons, and especially material difficulties such as overcrowding. Although there was no lack of political will to improve the situation, the country simply did not have sufficient means. The Ministry of Justice was continuing its efforts to preserve the dignity of inmates, for example by installing telephone lines in the prisons, by organizing on an experimental basis family visits in pleasant surroundings with respect for privacy, and by building new facilities and enlarging and modernizing existing ones so as to reduce overcrowding. NGOs had taken part in the renovation of certain places of detention, including the Oujda prison in north-eastern Morocco.

20. The Arabic version of the first draft of the Prisons Bill was available to the Committee members for information. As soon as it was adopted, the delegation would send it to the Committee in its final form for examination.

21. One main point in the Prisons Bill was the classification of facilities with a view to rehabilitating prisoners, the aim being to provide an appropriate environment for each individual's vocational training and integration into society. For example, some facilities would provide agricultural training for inmates from rural areas, while others would have woodworking shops to train carpenters, and special programmes would be set up for minors. The Bill provided that prisoners' rights and obligations should be clearly posted, and should be explained to illiterate inmates by social workers employed by the prison administration.

22. Questions had been raised concerning solitary confinement, which could be imposed either for security reasons or as a disciplinary measure. In the former case any decision by a prison warden to place an inmate in solitary confinement had to be brought to the attention of the Director-General of the Prison Authority, who would ensure that the decision was properly taken. The inmate concerned was entitled at least twice a week to see the prison doctor, who could order discontinuation of the measure. Solitary confinement could not generally exceed three months' duration, but in exceptional cases it could be extended with the consent of the Director-General of the Prison Authority and the prison doctor. Apart from the isolation from other prisoners, the penitentiary regime was the same as that applied to other inmates.

23. When solitary confinement was resorted to as a disciplinary measure, the Bill attempted to respect a golden rule of criminal procedure, namely that of proportionality between the infraction and the penalty, which might be no more than a simple warning. Isolation could not exceed 45 days' duration and could not be applied to minors. The decision to impose it, which must be in writing and was subject to appeal, was taken by a disciplinary committee after it had heard the prisoner and any witnesses cited by him or by the administration. Prisoners placed in solitary confinement were allowed to maintain contact with their lawyers.

24. The Bill also provided for the continuation and enhancement of vocational activities, training and education and exceptional granting of prison leave for seven days or less, with the aim of maintaining family ties or of preparing the inmate for integration into society at the end of the sentence. For details of health care provisions Committee members could refer to articles 123-139 of the first draft of the Bill.

25. Another query concerned compensation, and specifically whether persons not cited among the 112 names mentioned by the Advisory Council on Human Rights had any entitlements under the law. That list covered only cases of enforced disappearance; it did not concern persons who had previously been reported missing but had since been released and were currently free. For example, among the 112 on the list, there were 34 who had been reported missing in one locality. In the same place, 28 had been released in 1991 and were currently at large. They received monthly compensation equivalent to some $500 per month, or approximately the monthly salary of a high public official. Other persons who had been reported missing were not receiving monetary compensation, but had had help in being reinstated in their former jobs. All such cases were considered by an arbitration board set up by the Advisory Council on Human Rights.

26. Apart from any material considerations, Morocco had the moral obligation to comply with the provisions of the human rights instruments which it had ratified. As soon as a human rights convention was signed, ratified and published, it had primacy over domestic law and regulations. The only question that remained was how to ensure that its provisions were legally applied at all levels, and the best answer was through education.

27. Mr. HABIB BELKOUCH (Morocco) thanked the Committee members and the international NGOs which had forwarded their reports to the Moroccan delegation with the aim of ensuring a more substantive discussion. He hoped the very useful procedure of frank and objective dialogue for the benefit of human rights would continue.

28. A number of NGOs and Committee members had referred to the matter of how to bring Moroccan law into line with the Convention against Torture. Clearly, the pace of legislative change was not commensurate with the wishes of the Committee members, of the NGOs advocating a State based on the rule of law, or of the Moroccan Government itself, which was making a serious effort to bring national law into conformity with international conventions. While the Penal Code already provided sanctions for any abuse of power or arbitrary acts depriving persons of their freedom, the Government was working to make it more just and to adapt it to the requirements of the Convention, notably by drawing up a definition of the crime of torture.

29. Revision was badly needed throughout the national legislation. For example, the Prisons Bill was due to replace an Act dating from 1930. In revising such laws, the Government worked closely with Moroccan NGOs. One such organization, the National Children's Rights Observatory, had provided an article-by-article commentary on the revision of laws concerning children's rights, which had been extremely helpful. The Ministry of Human Rights had also submitted to the Government a draft law on imprisonment for debt, aimed at bringing domestic legislation into line with article 11 of the International Covenant on Civil and Political Rights.

30. The Government was convinced that the current procedures would be effective in bringing national legislation into conformity with the country's international obligations, and meanwhile was grateful to the Committee for it proposals and suggestions.

31. In the practical sphere, the Moroccan justice system had been known for its slow functioning in the past. The High Council of the Magistrature and the current Government had taken various administrative and practical measure to improve the situation.

32. The main objectives of the Prisons Bill were to make prisons into more humane places and to open them up to civil society, for example by enabling NGOs to have access to all the country's prisons so they could investigate specific allegations of illtreatment and conduct cultural and medical care activities for the benefit of inmates. Such investigations had already begun for example the Moroccan Organization for Human Rights had recently carried out an independent inquiry into three deaths at one prison, and had issued it own report.

33. Should the Committee on Torture so desire, it too would be welcome to send a mission to inspect Moroccan prisons, where the situation was clearly far from ideal. As in many developing countries, there were substantial material needs, the staff required training, and the inmates' standard of living must be improved. Already in the current year the Moroccan authoritie were working with Penal Reform International to train prison staff and to improve the situation of minors in prison. Any further cooperation from NGOs or any other bodies would be most welcome in tackling those problems.

34. Some of the recent reforms to Moroccan legislation included provision for alternative sentences such as community service for persons convicted of lesser offences, including minor debts. The confinement of such persons was not in society's interest.

35. In the field of education, the Ministry of Human Rights had drawn up a national plan. It had initiated the revision by experts and NGO consultants of over 120 primary and secondary school textbooks, with a view to inculcatin the main principles of human rights. The revised texts were to be introduced on a trial basis in five regions, where the Ministry had also held a number o train-the-trainers sessions. However, human rights involved the whole of society, and could not be introduced by decree. In the past year and a half, the Ministry had come to realize that they could not be disseminated solely through educational specialists working in the schools, but required a wide range of activities, including events organized by NGOs, poster displays and other exhibits. In the past year alone, some 20 such events had been organized in the region of the capital.

36. Working with UNESCO, the Ministry had established two chairs at universities, and several universities had set up human rights training and research units. In addition, the previous month, the United Nations High Commissioner for Human Rights had signed an agreement with the Ministry of Human Rights for the creation in Rabat of a national human rights documentation, study, and information centre for the use of law enforcement officers, NGOs and other groups, including teachers and medical professionals

37. The Moroccan authorities were conducting a human rights awareness campaign which included the production of a two-volume book distributed in some 20,000 copies, the first volume containing the texts of all human rights instruments ratified by the country and the second being devoted to humanitarian law.

38. A ten-day regional seminar on human rights training was currently being held in Morocco by the Ministry of Human Rights and the Arab Institute for Human Rights, based in Tunis. The Government considered such activities an essential element in the campaign for human rights.

39. Mr Bentelloun-Touimi (Morocco) said that, in regard to harmonization of legislation, considerable efforts were being devoted to reforming the Penal Code and the Code of Criminal Procedure, while at the same time a task force, headed by an emminent professor of criminal law was engaged in drafting new legislation that complied with international instruments, including the Convention against Torture. The drafts would shortly be submitted to the Government and subsequently to Parliament. The statistics requested were available, since they served as a basis for future policy and were in the public domain.

40. In response to a question by Mr.González Poblete, he said that a subordinate who had committed an act of torture and his superior who had ordered him to do so were both liable to prosecution. He believed that members of the armed forces were tried by a military court, regardless of the nature of the offence.

41. The CHAIRMAN thanked the delegation of Morocco for their replies to the Committee's questions.

42. The delegation of Morocco withdrew.

The public part of the meeting was closed at 4.45 p.m.